Neutral Citation Number: [2025] EWHC 1249 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
TRUSTS AND PROBATE LIST (ChD)

Case No. BL-2021-MAN-000033

Courtroom No. 41

1 Bridge Street West
Manchester
M60 9DJ

Friday, 21st February 2025

Before:
HIS HONOUR JUDGE CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

B E T W E E N:

(1) BEN LEESON
(2) WILLIAM ANTHONY LEESON

Claimants

and

DONALD MCPHERSON

Defendant

MR TOM GOSLING (instructed by **Glaisyers Solicitors LLP**) appeared on behalf of the **Claimants**
NO APPEARANCE by or on behalf of the **Defendant**

APPROVED JUDGMENT

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HHJ CAWSON KC:

1. At a hearing on 24 January 2025, I found that the Defendant, Donald McPherson, was guilty of contempt of court by breaching the disclosure order ancillary to a post-judgment freezing injunction made by the order of Richard Smith J dated 6 September 2024. Having found the Defendant guilty of contempt of court, I adjourned the question of sentence or punishment on the basis that my order dated 24 January 2025, together with a transcript of my judgment, would be served on the Defendant and should he wish to attend and/or make representations in relation to sentence or punishment, he would have the opportunity to do so. In fact, notwithstanding service thereof upon him, there has been no response from the Defendant, and so the application will proceed today in the Defendant's absence.

2. The Claimants are represented, as they were on 24 January 2025, by Mr Tom Gosling of Counsel.

3. The first matter which I should consider is as to whether I should proceed in the absence of the Defendant. The approved transcript of the judgment that I delivered on 24 January 2025, together with the order that I made that day, has been served on the Defendant by email as directed by that order. He has, therefore, had the opportunity of responding and has chosen not to do so.

4. On 24 January 2024, I proceeded in the Defendant's absence for the reasons that I set out in paragraphs 14 to 21 of my judgment delivered on that occasion. At paragraph 21 of that judgment, I said that:

> "In the light of these considerations, I consider that I can be satisfied that the Defendant has waived his right to appear today and taken the deliberate decision not to appear. I conclude that in the somewhat exceptional circumstances of the present case, it is appropriate and, indeed, necessary to proceed in the Defendant's absence".

5. I consider that exactly the same considerations apply today and that I should proceed to deal with the question of punishment and sentence in the Defendant's absence.

Sentencing Principles

6. Mr Gosling, in his helpful skeleton argument, has drawn my attention to the recent decisions of Mellor J in *Crypto Open Patent Alliance v Wright* [2024] EWHC 3316 (Ch) and of Bryan J in *SIA Investment Industry v Bryce* [2024] EWHC 269 (Comm). These decisions set out the relevant principles to apply to sentencing in a case of contempt, and I draw heavily thereon in the following paragraphs.

7. The Court may impose a sanction of imprisonment for a fixed term not exceeding two years; see section 14(1) of the Contempt of Court Act 1981, or an unlimited fine; see *Attorney General v Crosland* [2021] 4 WLR 103, Supreme Court. The Court may also order sequestration of assets; see CPR 81.9(1).

8. The general principles to be applied by the Court in sentencing for contempt were summarised by the Supreme Court in *Attorney General v Crosland*, *supra,* at [44], drawing on the decision of the Court of Appeal in *Liverpool Victoria Insurance*

Company Ltd v Khan [2019] EWCA Civ 392, [2019] 1WLR 3833 at [57] to [71], as follows ("**the *Crosland* Principles**"):

> "1) The Court should adopt an approach analogous to that in criminal cases where the Sentencing Council's guidelines require the Court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused.
>
> 2) In light of its determination of seriousness, the Court must first consider whether a fine would be a sufficient penalty.
>
> 3) If the contempt is so serious that only a custodial penalty will suffice, the Court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
>
> 4) Due weight should be given to matters of mitigation such as genuine remorse, previous positive character and similar matters.
>
> 5) Due weight should also be given to the impact of committal on persons other than the contemnor, such as children and vulnerable adults in their care.
>
> 6) There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's guidelines on reduction in sentence for a guilty plea.
>
> 7) Once the appropriate terms have been arrived at, consideration should be given to suspending the term of imprisonment. Usually, the Court will already have taken into account mitigating factors when setting the appropriate term, such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension".

9. In *Crosland*, the Supreme Court also summarised the Court of Appeal's decision in *Liverpool Victoria v Khan* at [57] to [71] and echoed the principles established in the previous cases. Thus, for example, where the contemnor is so serious that only a custodial penalty will suffice, the Court must impose the shortest period that properly reflects the seriousness of the contempt; see also *Willoughby v Solihull MBC* [2013] EWCA Civ 699 at [27] and *Aquilina v Aquilina* [2004] EWCA Civ 504 at [14].

10. In *Business Mortgage Finance 4 PLC & Others v Hussain* [2022] EWCA Civ 1264, [2023] 1 WLR 396, Arnold LJ, at [120] identified the following checklist of factors derived from the decision of Lawrence Collins J in *Crystal Mews Ltd v Metterick* [2006] EWHC 3087 (Ch) and the decision of Popplewell J in *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd* [2015] EWHC 3748 (Comm):

> "(a) whether the Claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has co-operated;

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward".

11. These factors are to be regarded as aspects of the seriousness of the contempt under the first of the *Crosland* Principles; see *Madison Pacific Trust Ltd v Grozer v Naumenko* [2024] EWHC 2588 (Comm) at [98].

12. Arnold LJ in *Business Mortgage Finance 4, supra,* at [119] also endorsed the following guidance provided by Leech J in *Solicitors Regulation Authority Ltd v Khan* [2022] EWHC 45 (Ch) at [52]:

"(1) There are no formal sentencing guidelines for sentence/sanction in committal proceedings.
(2) Sentences/sanctions are fact-specific.
(3) The Court should bear in mind the desirability of keeping offenders and, in particular, first-time offenders, out of prison.
….

(6) Committal to prison may serve two distinct purposes: (a) punishment of past contempt and (b) securing compliance: see *Lightfoot v Lightfoot* [1989] 1 FLR 414 at 414-417 (Lord Donaldson MR).
(7) It is good practice, for the Court's sentence to include elements of both purposes (punishment and compliance) to make clear what period of committal is regarded as appropriate for punishment alone, i.e. what period would be regarded as just if the contemnor were promptly to comply with the order in question: see *JSC Bank v Solodchenko (No 2)* [2012] 1 WLR 350.
(8) Committal may be suspended: see CPR Part 81.9(2). Suspension may be appropriate: (a) as a first step with a view to securing compliance with the Court's orders: see *Hale v Tanner* [2000] 1 WLR 2377 at 2381; and (b) in view of cogent personal mitigation: see *Templeton Insurance Ltd v Thomas* [2013] EWCA Civ 35".

13. In cases such as the present of continuing contempt where the sentence is expressly specified to include punitive and coercive elements, the element of sentence which is intended to encourage compliance may be remitted if the contempt is purged; see *Robert John McKendrick v FCA* [2019] 4 WLR 65 (CA) at [41].

14. Popplewell J in *Asia Islamic Trade Finance*, *supra*, at [7(5)], drawing on earlier authorities including *JSC VTB Bank v Solodchenko (No 2), supra,* at [67], said:

> "In the case of a continuing breach, the Court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches; and (b) what portion of a sentence the Court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive but not binding upon a future Court. If it does so, the Court will keep in mind that the shorter the punitive element of the sentence, the greater the incentive for the contemnor to comply by disclosing the information required. On the other hand, there is also a public interest in requiring contemnors to serve a proper sentence for past non-compliance with court orders, even if those contemnors are in continuing breach. The punitive element of the sentence both punishes the contemnors and deters others from disregarding court orders".

Application of the Sentencing Principles to the Facts of the Defendant's Contempt.

15. As to the seriousness of the contempt in the present case, as Mr Gosling identifies, a number of cases have determined that breaches of court orders and disclosure orders ancillary to freezing orders, in particular, are serious. In *Robert John McKendrick v FCA*, *supra*, at [40], it was said, "Breach of a court order is always serious because it undermines the administration of justice"; see also *Law House Ltd (In Administration) v Adams* [2020] EWHC 2344 (Ch) at [66] and *JSC VTB Bank v Solodchenko (No 2), supra*, at [51].

16. I agree with the submissions made by Mr Gosling on the Claimants' behalf that the Defendant's failure to comply with the relevant asset disclosure order in the present case falls at the higher level of seriousness in that:

    a) The breach was deliberate, knowing and contemptuous, and I consider that I am entitled to proceed on that basis.

    b) The Defendant had previously failed and refused to comply with an original asset disclosure order made in support of a freezing order made prior to the trial in the present case, granted on substantially the same terms.

    c) I consider that the breach has caused serious prejudice to the Claimants and the administration of justice, I consider, in that the Claimants have been deprived of information required to effectively police the freezing order or to enforce the substantive judgment arising from the findings made against the Defendant at trial in relation to the unlawful killing of Paula Leeson. Further, the Claimants and the Court have been put to further disruption, nuisance and expense in relation to the advancing and resolution of the contempt application.

    d) There is no evidence that the Defendant acted under any pressure or that the breach arose because of the conduct of others.

e) The Defendant has not cooperated or engaged with the court process, whether in relation to complying with the asset disclosure order or otherwise in response to the contempt application. I consider that I am entitled to proceed on the basis that the Defendant clearly believes that his presence outside the jurisdiction puts him beyond the reach of the Court and permits him not to comply.

f) There has been no admission and acceptance of responsibility, apology, remorse or reasonable excuse proffered. This is so, notwithstanding the further opportunity given to the Defendant following the finding of contempt as against him.

g) The contempt is continuing. The Defendant has had multiple opportunities to remedy his contempt but has failed to do so without explanation. It would have been open to him to remedy the defect between the finding of contempt against him and today's hearing, but again, he has made no attempt to do so.

17. In all the circumstances, I consider that I should proceed on the basis that the Defendant's culpability for his contempt is high and that this is a very serious case.

Is it Appropriate to Impose a Fine, or is a Term of Imprisonment Appropriate and, if so, What is the Shortest Period of Imprisonment that Might Properly be Imposed in the Circumstances of the Present Case Applying the Relevant Principles?

18. I am satisfied that the contempt in the present case is so serious that only a custodial sentence will suffice. In my judgment, a fine would be wholly insufficient to reflect the seriousness of the case.

19. Mr Gosling has referred to a number of authorities that highlight the particular seriousness of breaches of a freezing orders, and breaches of ancillary disclosure orders relating thereto. The authorities describe such breaches as "an attack on the administration of justice", which usually merits an immediate sentence of imprisonment of a not insubstantial amount; see *Asia Islamic Trade Finance*, *supra*, at paragraph [7(3)] as well as *Law House Ltd, supra,* at [65].

20. In *JSC VTB Bank v Solodchenko (No 2), supra,* it was stated at [51], per Jackson LJ, that:

> "Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year".

Jackson LJ further stated at [55] that:

> "From this review of authority, I derive the following propositions concerning sentence for civil contempt, when such contempt consists of non-compliance with the disclosure provisions of a freezing order: Freezing orders are made for good reason and in order to prevent the dissipation or spiriting away of assets. Any substantial breach of such an order is a serious matter, which merits condign punishment. Condign punishment for such contempt normally means a prison sentence. However, there may be circumstances in which a substantial fine is sufficient: for example, if the contempt has been purged and the relevant assets recovered".

21. In *Discovery Land LLC v Jirehouse* [2019] EWHC 2264 (Ch), Zacaroli J expressed himself in these terms at [19]:

> "…the failure to comply with these obligations necessitates an order for committal. Disclosure obligations in aid of a freezing injunction are of the greatest importance to enable a Claimant and the Court to police the injunction and enforce it against third parties. That is particularly so where the injunction is in aid of a proprietary claim and the Claimant is seeking to discover what has happened to money which should have been held for it but has been dissipated".

22. As is stated in Gee on Commercial Injunctions, 7th Edition, at paragraph 20-029:

> "Where there is a continuing failure to disclose relevant information under a freezing injunction, the Court may consider the imposition of a severe sentence that has the object of encouraging compliance, potentially even imposing the maximum possible sentence while expressly acknowledging the power to vary or discharge the sentence in the event of disclosure".

23. In *İşbilen v Selman Turk* [2024] EWCA Civ 568, the Court of Appeal reaffirmed at [56] that an immediate custodial sentence will usually be appropriate for a breach of a disclosure order, notwithstanding the absence of a formal "tariff".

24. As to the length of sentence, the maximum term of two years is not reserved for the worst sort of contempt; see *Robert John McKendrick v FCA, supra,* at [40], per Hamblen and Holroyde LJJ:

> "Because the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt which can be imagined. Rather, there will be a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and as therefore justifying a sentence at or near the maximum."

25. Where breaches are continuing, the Court can impose the maximum two-year sentence, drawing the Court's attention to the power to vary or discharge the coercive parts of the sentence if the Defendant makes disclosure, or the Court may suspend the sentence on that condition; see *JSC VTB Bank v Solodchenko (No 2), supra,* at [52].

26. The fact that a Defendant is abroad and, therefore, a sentence might not be capable of being executed is not a reason not to impose a custodial sentence. In *Vis Trading Company Ltd v Nazarov & Others* [2015] EWHC 3327 (QB), [2016] 4 WLR 1, Whipple J said this at [58]:

> "I do not accept that the imposition of a sentence is futile. The Court cannot just stand by in the face of disobedience to its orders just because the contemnor is outside the jurisdiction. The fact that a committal order has been made will be public and may have reputation or business consequences for the first Defendant and his companies, it will not be meaningless. Further still, the

> Claimant is entitled to point to the breaches of the order and to see committal as a step towards eventual compliance, which still remains possible. This is not a redundant exercise".

27. Having regard to the above considerations, and subject to any questions of mitigation, I am satisfied that the present case is so serious that the appropriate course is for the Court to impose the maximum sentence of 24 months but, at the same time, to indicate in accordance with the principles considered by Popplewell J in *Asia Islamic Trade Finance Fund Ltd, supra*, at [7(5)] that there is a portion of this sentence that should be served in any event, and a proportion that the Court might consider remitted in the event of prompt and full compliance hereafter. I should make clear that that although 24 months is the maximum period that the Court can impose, I am satisfied that this is still the shortest period of imprisonment which properly reflects the seriousness of the contempt.

28. In my judgment, the appropriate course would be for me to indicate that the Defendant should serve a term of imprisonment of 12 months in any event, but that the Court might consider remitting 12 months of the sentence of 24 months in the event which, perhaps as matters stand appears somewhat unlikely, the Defendant does promptly; and by "promptly", I mean within 28 days, comply fully with the terms of paragraph 10 of the relevant asset disclosure order. In those circumstances, the indication that I have given may be persuasive were application to be made by the Defendant for remission of part of the sentence in the event of compliance.

29. This is therefore the sentence that I impose subject to consideration of questions of mitigation.

30. Turning to the question of mitigation, the position, in reality, is that there are no mitigating factors readily identifiable in the circumstances of the present case. There has been no admission and no attempt to purge the contempt that I found proved. To the contrary there has been a display of real contempt towards the authority of the Court and its process.

31. This is not a case where the Court is obliged to take into account that the Defendant is or might be a man of good character.

32. The evidence and information before the Court is, indeed to the contrary in the light of the finding in the present proceedings that the Defendant unlawfully killed Paula Leeson and the emergence in the course of the present proceedings of evidence that the Defendant has committed some 32 criminal offences of dishonesty and fraud in various jurisdictions throughout the world. In these circumstances, there is simply no basis for any discount being given on the basis of the Defendant being of good character. He is plainly a man of bad character.

33. It is necessary for me to consider whether any part of the sentence should be suspended. I am satisfied that it would not be appropriate to suspend any part of the sentence and that so far as any attempt might be made to secure compliance with the asset disclosure order, that is more appropriately dealt with in the manner that I propose to deal with it, by giving an indication as to how much of the sentence might be considered for remission were an appropriate application to be made by the Defendant in the event of prompt compliance. This ought to provide at least some incentive to comply whilst still recognising the seriousness of the contempt.

34. I have taken into account recent observations made in other cases about the very high prison population, but this is not a case where I consider that any discount ought to be applied by reason thereof, and so I do not do so.

Conclusion

35. Accordingly, in short, I will impose a term of imprisonment of 24 months which is the maximum that the Court can impose, but I indicate that whilst 12 months of that sentence should be served in any event, if there is compliance with paragraph 10 of the relevant asset disclosure order within a period of 28 days of the service of today's order on the Defendant, then, in considering whether any part of the sentence might be remitted in the light thereof, the period which might be considered for remission would be the period of 12 months.

36. if the Defendant is required to serve the term of imprisonment, then he would be entitled to automatic release after having served half of the sentence.

37. So far as the form of order is concerned, I will hear further from Mr Gosling in relation thereto

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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